



POLICE DEPARTMENT

February 4, 2009

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Eric Ulshafer
Tax Registry No. 898678
34 Precinct
Disciplinary Case No. 83491/07

The above-named member of the Department appeared before me on October 7 and October 16, 2008, charged with the following:

1. Said Police Officer Eric Ulshafer, assigned to the 34th Precinct, while on duty on or about 0245 hours on July 24th, 2006 abused his authority as a member of the New York City Police Department in that he wrongfully and without just cause threatened to use force against an individual known to this Department, to wit: said Officer said, "This is going to be the last time you're going to be around this area. I know your car already. If I see you, you're going to know who I am."

PG 203-10 Page 1, Paragraph 4 – ABUSE OF AUTHORITY

2. Said Police Officer Eric Ulshafer, assigned as indicated in Specification #1, at the time, date and location in Specification # 1, was wrongfully and without just cause discourteous to an individual known to this department, to wit: said Officer said, "Listen stupid...", and "You fucking idiot," and "Now you're dismissed, motherfucker."

PG 203-09 Page 1, Paragraph 2 – DISCOURTESY TO AN INDIVIDUAL

3. Said Police Officer Eric Ulshafer, assigned as indicated in Specification # 1, did wrongfully make an improper remark based on the race/ethnicity of an individual known to this Department, to wit: said Officer said, "The NYPD should be ashamed to hire Dominicans, motherfucker."

PG 203-10 Page 1, Paragraph 1 – ETHNIC SLUR

The Department was represented by Andre Applewhite, Esq., Department Advocate's Office and the Respondent was represented by Stephen C. Worth, Esq.

COURTESY • PROFESSIONALISM • RESPECT

The Respondent, through his counsel, entered a plea of Not Guilty to the above charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty of Specification Nos. 2 and 3 and Not Guilty of Specification No. 1.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Police Officer Luis Pichardo, Maximo Gonzalez, Martha Moreta and Ricardo Ramirez as witnesses.

Police Officer Luis Pichardo

Police Officer Pichardo testified that during July, 2006, he was a probationary police officer assigned to the 28 Precinct. Pichardo recalled that on July 24, 2006, he was off-duty. He made arrangements to meet up with former classmates from [REDACTED] and off-duty police officers with whom he had gone through training at the Police Academy. He drove his [REDACTED] to [REDACTED] and [REDACTED]. When he arrived there, at about 2:20 a.m., he saw about 30 cars parked with radios playing music. He saw no police barriers. He conversed with his friends. His fellow police officers left, but he remained. His friend Maximo asked him if he could provide a ride for him, a female friend of his and her child, who was three or four years

old. He agreed. They all got into his car. He turned on the radio, made a right turn and began to drive away.

As he was driving northbound on Amsterdam Avenue, an unmarked police vehicle traveling southbound on Amsterdam Avenue passed his car. The unmarked police vehicle made a u-turn, began traveling northbound on Amsterdam Avenue behind his car, and then pulled his car over on Amsterdam Avenue. The Respondent approached him and asked for his license and registration. Pichardo testified that he told the Respondent that he was "with the service" and showed the Respondent his Department ID card and his Department shield. The Respondent directed Pichardo to "Get out of the car." When he did so, the Respondent brought him close to the rear bumper of Pichardo's car.

The Respondent asked Pichardo, "What are you doing around here? You are Dominican. You fucking Dominicans. The New York Police Department should have been ashamed to be hiring Dominicans." Pichardo testified that the Respondent began to wave his hands and that he thought that the Respondent might hit him. The Respondent started screaming, "You fucking mother fucker! What are you doing here?" When the Respondent stopped screaming at him for a few seconds, Pichardo believed that he was done yelling at him and so he started to walk back toward the driver's door of his car. The Respondent began laughing and told him, "You are not dismissed, you mother fucker." Pichardo walked back to the Respondent. The Respondent then smiled, placed his mouth about "four inches" from Pichardo's ear, and screamed, "Now you are dismissed mother fucker." Pichardo recalled that the Respondent also told him, "I can take your job right away." When the Respondent told him this, the Respondent snapped his

fingers, indicating in-an-instant. Pichardo did not ask the Respondent why he had stopped Pichardo's car. The Respondent also told him, "I know your car. If I see you, you're going to know who I am." Pichardo testified that he perceived the Respondent's remark as a threat.

On cross-examination, Pichardo testified that the other off-duty police officers he was hanging out with were Police Officers Wilding and Grullon. Pichardo admitted that the child was not seated in a safety seat in the car. He recalled seeing Police Officer Wilding watching when the car was stopped. He testified that he does not know the name of the female who was inside his car with the child. He recalled that when the car was stopped by the Respondent, the windows were up and the air conditioning was on. He recalled that there were no police barriers at either end of the street he had parked on. He testified that his car was pulled over by the Respondent for no reason. He confirmed that he was not frisked by the Respondent and that he was not in possession of his firearm at that time. He testified that the Respondent had called him "a mother fucker" for no reason because he had responded to the Respondent's questions only by stating "yes sir" or "no sir" or "I'm sorry."

Pichardo acknowledged that he had a cell phone on his person at the time of this incident. When he was asked why he had not used the cell phone to call for a patrol supervisor to respond to the scene, he explained that he was a "rookie" and that he was "nervous" because a uniformed officer was "screaming at me." Pichardo testified that after this incident, he spoke to Police Officer Wilding but that Wilding did not advise him to call for a patrol supervisor.

He testified that when the Respondent told him, "If I see you, you're going to know who I am," he interpreted that remark as meaning that the Respondent was "going to do something, I don't know what."

Pichardo testified that on July 25, 2006, he went to the 33 Precinct to report this incident and that he was directed to go to the Civilian Complaint Review Board (CCRB) and to the Department's Office of Equal Employment Opportunity (OEEO). Two days later, he contacted a Sergeant Miller who advised him to go to CCRB. Four days later, he went to CCRB accompanied by Miller. Pichardo acknowledged that he could have contacted the desk sergeant at the 34 Precinct. He testified that he did not file a complaint with OEEO because he was concerned that if he did so, such a complaint would "hurt him (the Respondent) more." He explained that he considered an OEEO complaint to be more serious and potentially more harmful to the Respondent and that he did not want to "take his job."

Maximo Gonzalez

Gonzalez, who is twenty-four years old, works as a cab driver, and resides [REDACTED], recalled that on July 24, 2006, he asked Pichardo, who was alone in his car, if he could give him a ride to the train station. Gonzalez testified that he was aware that Pichardo was a police officer. Gonzalez recalled that he and [REDACTED] Lucy, who had her child with her, got into Pichardo's vehicle. Gonzalez recalled that he sat in the rear seat behind the front passenger seat. Lucy sat down in the rear seat behind the driver's seat. She placed her child on her lap because there was no child's car seat. Gonzalez testified as Pichardo drove them toward the train station, he was not speeding.

Gonzalez observed a black vehicle make a u-turn and then pulled them over. Three police officers got out of the black car. Gonzalez testified that Respondent, who Gonzalez identified in the trial room, asked Pichardo to produce his license and registration. Gonzalez heard Pichardo identify himself to the Respondent as being a police officer and he showed the Respondent his shield. The Respondent told Pichardo to get out of the car and Pichardo did so. Gonzalez heard the Respondent tell Pichardo, "NYPD should be ashamed hiring cops like you." Gonzalez testified that the Respondent began "screaming" at Pichardo, "fucking crazy, out of your mind. What are you doing here? Get the fuck out of here!" Gonzalez testified that when Pichardo began to walk away from the Respondent, the Respondent told him, "You are not dismissed yet." The Respondent also told Pichardo, "the next time I see you here, I'm going to make sure you get locked up." Gonzalez testified that he had no recollection as to what Pichardo said to the Respondent.

On cross-examination, Gonzalez testified that he did not observe Pichardo commit any traffic violation. He confirmed that there was no car seat for a child. Gonzalez testified that when the Respondent told Pichardo that he was "going to make sure you get locked up," the Respondent did not state what he was going to lock Pichardo up for. Gonzalez testified that he did not hear the Respondent use the term "Dominicans." Gonzalez testified that the area where Pichardo's car was stopped is "ninety percent Dominicans."

Gonzalez denied that he and Pichardo had been drinking behind the school before Pichardo started to drive them. He testified that it was "ok" to be on the street they were on if was not "restricted" by police barriers which it was not that day. Gonzalez recalled

that the Respondent took Pichardo to the rear of Pichardo's car before he began to speak to him. Gonzalez was able to hear what the Respondent said to Pichardo because the car windows were open at that time. Gonzalez recalled the two other police officers who was with the Respondent asked he and Lucy why they did not have a safety seat for the child. Gonzalez acknowledged that he only heard "part" of what the Respondent said to Pichardo.

Gonzalez confirmed that on August 7, 2006, when he went to CCRB to be interviewed, he was driven there by Joe Miller, of the Fraternal Order of Dominican Officers, and then he was accompanied to CCRB by Pichardo and Martha Moreta.

Martha Moreta

Moreta, who is twenty-three years old, employed as a sale representative for Arizona Ice Tea, and resides [REDACTED], testified that her husband, [REDACTED] is a friend of Pichardo's and that she has known Pichardo for about seven years.

Moreta recalled that on July 24, 2000, at about 2:45 a.m. she was driving her car when she observed a police officer "screaming" at Pichardo. She testified that she heard the police officer call Pichardo "stupid" and "fucking Dominican." The police officer told Pichardo that "he should be ashamed to be Dominican." She also heard the officer tell Pichardo, "You are not dismissed." Moreta recalled that she saw Maximo Gonzalez, Richardo Ramirez and a young woman with a child seated inside Pichardo's car.

On cross-examination, Moreta testified that she, her husband and his brother are all Dominicans. She acknowledged that she could not recall "word for word" everything that the police officer said to Pichardo. She acknowledged that she arrived at the scene of

this incident after Pichardo had already been stopped and that when she first observed him he was standing outside his car. Moreta also acknowledged that “we all went together to CCRB.”

Richardo Ramirez

Ramirez, who resides [REDACTED] and who was employed by the Food Emporium for three years and has been employed by Whole Foods for the past six months, testified that Martha Moreta is his sister-in-law.

Ramirez recalled that on July 24, 2006, at about 2:45 a.m., Pichardo offered him a ride home in Pichardo’s car. Ramirez testified that after the car was stopped by police officers, the Respondent, who Ramirez identified in the trial room, starting screaming at Pichardo while they were standing outside the car face to face. Ramirez recalled that after the car was stopped, the Respondent asked to see Pichardo’s license and registration and that Pichardo had displayed his police department shield to the Respondent. Ramirez testified that he heard the Respondent call Pichardo “an idiot” eight times. He also heard the Respondent tell Pichardo that NYPD should be ashamed to have a Dominican on the force. He recalled hearing the Respondent call Pichardo “stupid” and a “fucking Dominican.” The Respondent also said to Pichardo, “you’re a disgrace to NYPD.” He further recalled that the Respondent told Pichardo, “If I see you again, you’ll really see who I am.”

On cross-examination, Ramirez testified that he specifically recalled that he heard the Respondent call Pichardo an idiot eight times because “he counted in my head,” each time he heard the Respondent call Pichardo an idiot. Ramirez recalled that when he went

to CCRB to be interviewed, he met Pichardo in front of CCRB's headquarters. Ramirez testified that Pichardo was pulled over by the police for no reason because he was not speeding. Ramirez recalled that he was able to hear what the Respondent said to Pichardo because the car window that Ramirez was seated next to was down at the time. Ramirez recalled that the Respondent also told Pichardo "and you are carrying a baby without a seatbelt."

The Respondent's Case

The Respondent called Sergeant Curtis Crystal, retired Police Officer Timothy Murphy and Police Officer Michael Rodriguez as witnesses and testified on his own behalf.

Sergeant Curtis Crystal

Sergeant Crystal, who is assigned to Patrol Brought Manhattan North Investigation Unit, testified that he was to investigate the allegation against the Respondent in late in December, 2007. Crystal testified that he was the third investigator to be assigned to this case. He read the file and noted that the two previous investigators had indicated that there was a lack of cooperation by the civilians who had been interviewed at CCRB. Crystal testified that because he was unable to interview any of the civilians who had cooperated with CCRB, "all I had" was the tape recordings of the official department interviews that were conducted of Pichardo and the Respondent. Crystal testified that he closed his investigation into Pichardo's allegations that the Respondent had been discourteous to him and had uttered ethnic slurs, by unsubstantiating these charges. Crystal acknowledged that the fact that he had not been

able to interview the civilian witnesses in this incident affected his recommendation to unsubstantiate Pichardo's allegations against the Respondent. Crystal testified that he also investigated whether Pichardo should be charged with having failed to notify a supervisor regarding this incident. Crystal acknowledged that he did not interview anyone regarding this investigation. The official Department interviews of Pichardo and the Respondent were conducted by the previous investigators.

Retired Police Officer Timothy Murphy

Murphy, who retired from the Department on May 31, 2008, after 20 years of service, testified that he had been assigned to the 34 Precinct and that he had worked with the Respondent. Murphy recalled that he and the Respondent started working together during August, 2004. Murphy recalled that on July 24, 2006, he was partnered with the Respondent and that they were assigned to the Conditions Unit focusing on loud music and drag racing activities. Murphy testified that he served as the recorder and the Respondent was the operator of their unmarked vehicle. Police Officer Michael Rodriguez was also in the vehicle with them and occupied the rear seat.

Murphy recalled that they observed a red Nissan traveling at a high rate of speed and that is why they pulled the vehicle over. Murphy testified that he spoke to the female who was seated in the rear about the fact that she was traveling in a car with her child on her lap and that the child should have been in a safety seat. Murphy testified that he did not hear any of the Respondent conversation with the driver of the vehicle. Murphy testified that he did not personally determine that the driver was a member of the service

and that he “put my trust in” the Respondent that he had determined that the driver was a member of the service.

On cross-examination, Murphy testified that the driver of the red Nissan was going so fast that he slipped out of his lane into the adjoining lane. Murphy testified that after he retired from the Department, he told the Respondent that he would testify on his behalf regarding the complaint that the driver had made against him. Murphy recalled that as he was standing next to the rear passenger of the car addressing the female in the rear seat, Officer Rodriguez was standing behind him.

Police Officer Michael Rodriguez

Rodriguez, who is assigned to the 34 Precinct and has been the Respondent’s partner since October, 2004, testified that after the officers pulled over the red Nissan on July 24, 2006, they all exited their vehicle. Rodriguez testified that he did not personally speak to the driver or any of the passengers in the vehicle. He remained outside the vehicle but he did not hear the Respondent yell or utter “mother fucker” or any other profanity and he did not hear the Respondent use the term “Dominican.” Rodriguez testified that he is a Puerto Rican-American.

On cross-examination, Rodriguez acknowledged that he was interviewed with regard to this incident at CCRB on August 22, 2006, and that he was interviewed again regarding this incident by Patrol Borough Manhattan North Investigation Unit on October 4, 2007. Rodriguez acknowledged that at both of these interviews he told his interviewers that he did not hear any of the conversation that took place between the Respondent and the driver of the red Nissan.

The Respondent

The Respondent, who is assigned to the 34 Precinct, testified that on July 24, 2006, at about 0245 hours, he, Murphy and Rodriguez were conducting a precinct conditions patrol in an unmarked vehicle looking for individuals who might be drinking, playing loud music or drag racing in the area.

In the vicinity of [REDACTED] [REDACTED] and [REDACTED], there were police barriers placed to prevent vehicular traffic. The Respondent recalled that he observed the driver of a "red Toyota" speeding on two occasions that night. On the first occasion, they did not pull the driver over because they were issuing a summons to another motorist. On the second occasion, they pulled the driver over because the driver had committed "reckless driving or at least reckless endangerment."

The driver, who the Respondent later learned was Police Officer Pichardo, displayed his license and his Department ID card. He asked Pichardo to step out of the driver's seat and move to rear of his car, because he did not want to embarrass him in front of his friends. After Pichardo stepped out of the driver's seat and walked to rear of his car, the Respondent asked him how long he had been a member of the service. Pichardo responded, "Roughly a year." The Respondent testified that he "reminded him" that because he was "on probation" that "it doesn't take much to get himself into serious trouble" and that "he shouldn't be back there doing what he was doing." Pichardo made no response. When the Respondent was asked if he believed that Pichardo "had been acting inappropriately for a New York Police Officer," he answered, "Absolutely."

When the Respondent was asked, "How would you describe this area ethnically?" He answered, "Mostly Dominican." When the Respondent was asked whether he was

“angry” at Pichardo “because of his conduct,” the Respondent answered, “Yes.” The Respondent recalled that he also mentioned to Pichardo that the child in the rear seat of his car should have been in a car seat. The Respondent denied that he had threatened to use any force against Pichardo then or in the future. The Respondent also denied that he had uttered any of the remarks attributed to him in Specification Nos. 2 and 3. The Respondent, Murphy and Rodriguez re-entered their vehicle and drove away.

On cross-examination, the Respondent testified that Pichardo was driving 56 to 60 miles per hour when they pulled over his vehicle. The Respondent acknowledged that at his CCRB interview he had told his interviewers that Pichardo’s car was moving at double the speed limit. When the Respondent was asked whether he told Pichardo that he was stupid for doing what he did, the Respondent testified, “I don’t believe I called him stupid.” When the Respondent was asked whether he believed that Pichardo’s behavior was idiotic, the Respondent testified, “It wasn’t smart.”

FINDINGS AND ANALYSIS

Specification No. 1

It is charged that the Respondent abused his authority in that he wrongfully and without just cause “threatened to use force” against Pichardo by telling him, “This is going to be the last time you’re going to be around this area. I know your car already. If I see you, you’re going to know who I am.”

I find the Respondent Not Guilty because the Department failed to sufficiently prove that the words the Respondent directed at Pichardo constituted a clear threat to use force against Pichardo.

I find it significant that Pichardo did not assert that he interpreted what the Respondent said to him as a threat to use force against him. Although Pichardo testified that he perceived the Respondent's admonition that "I know your car" and that "if I see you, you're going to know who I am," as a threat to take some sort of action in the future, Pichardo acknowledged that because of the vagueness of the language the Respondent used, he could only conclude that the Respondent was telling him that he was "going to do something, I don't know what."

Also, even though Gonzalez testified that the Respondent told Pichardo "the next time I see you here I'm going to make sure you get locked up," threatening to have a person arrested in the future if he goes back to a location is not the same thing as threatening to use force against that person.

Based on the above, the Respondent is found Not Guilty of Specification No. 1.

Specification Nos. 2 and 3

It is charged that the Respondent was wrongfully and without just cause discourteous to Pichardo in that he told him, "listen stupid," and called him a "fucking idiot," and told him, "now you're dismissed, motherfucker." It is further charged that the Respondent wrongfully made an improper remark based on Pichardo's "race/ethnicity" in that he told him, "The NYPD should be ashamed to hire Dominicans, motherfucker."

Initially, I would note that the record is devoid of any reason Pichardo had to falsely allege to CCRB that the Respondent had uttered the comments cited in these two specifications. It is not disputed that the Respondent's stop of Pichardo's car was brief and uneventful and that the Respondent did not issue any summonses to Pichardo or

make any trouble for him by contacting his command. Moreover, because they had never met before, Pichardo had no axe to grind against the Respondent. Pichardo testified at this trial in a business-like manner and, although he acknowledged that the words the Respondent directed at him were hurtful, he displayed no personal animus toward the Respondent.

Thus, I credit Pichardo's version of this encounter because I find that it is unlikely that Pichardo would have gone to CCRB to make an allegation against a fellow member of the service unless the Respondent had, in fact, uttered what Pichardo claims he did.

Moreover, Pichardo's testimony was in large part corroborated by Moreta, Ramirez and Gonzalez regarding what the Respondent specifically said to him. The believability of Moreta's, Ramirez' and Gonzalez' testimony is enhanced by the fact that their individual testimonies were consistent but not suspiciously identical, as if they had been scripted. For example, although Moreta recalled hearing the Respondent say that "NYPD should be ashamed to hire Dominicans, motherfucker," Gonzalez' testified that he did not hear the Respondent utter the word Dominicans.

Thus, I find that each of these witnesses testified relying on his or her actual memory of what he or she heard the Respondent say.

The Respondent acknowledged that the area where he stopped Pichardo was ethnically "mostly Dominican," and he admitted that he became angry at Pichardo because he "absolutely" believed that he had been acting inappropriately by "doing what he was doing," and because he believed that Pichardo's behavior "wasn't smart." Moreover, the Respondent corroborated almost all of the details contained in Pichardo's version of this event except for the profane and racist comments delineated in these two

specifications. Based on the above, I can only conclude that the Respondent vented his admitted anger at Pichardo by uttering the above-cited comments.

The Respondent is found Guilty of Specification Nos. 2 and 3.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on October 15, 1990. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found Guilty of being discourteous to Pichardo, a fellow police officer, by calling him names, directing profanity at him and telling him "now you're dismissed motherfucker." The Respondent has also been found Guilty of making an improper remark about Pichardo's ethnicity by telling him that this Department should be ashamed to be hiring Dominicans.

In formulating a penalty recommendation, I have taken into consideration the Respondent's lack of a prior formal disciplinary record in over 18 years of service.

I have also taken into consideration that the record indicates that the Respondent's angry tirade was motivated in part by his disbelief that a rookie police officer would hang out in an area where, as the Respondent saw it, he could only get himself into trouble. Although it is clear that the Respondent was appalled to the point of bemusement and disdain by what he considered Pichardo's incredibly poor judgment of hanging out at a location that could endanger his career, and that the Respondent believed that despite his

inexperience Pichardo should have known better, the Respondent chose to convey his message that Pichardo was, as he saw it, being a fool and playing with fire by being where he was, by uttering profanity and an offensive racial remark. Thus, his verbal outburst was beyond the pale. Moreover, the Respondent's profane lecture was not delivered to Pichardo in private, but, rather, on the street, in public within earshot of civilians who were with Pichardo and anyone else nearby.

It is recommended that the Respondent forfeit 15 vacation days.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner - Trials

APPROVED
MAY 18 2009

RAYMOND W. KELLY
POLICE COMMISSIONER